

Chapter Two

2. Organization and Responsibilities

The three primary governmental entities involved in the cleanup of past contamination on any DON installation are the U.S. Environmental Protection Agency, the DON and the State. This chapter summarizes the organizational responsibilities of each of these participants in the Installation Restoration (IR) Program.

2.1 U. S. ENVIRONMENTAL PROTECTION AGENCY

(<http://www.epa.gov/>)

The mission of the U. S. Environmental Protection Agency (EPA) is to protect human health and safeguard the environment. EPA is the Federal agency responsible for providing guidance on hazardous waste site operation issues and EPA Superfund site cleanup activities. EPA conducts technical and environmental training programs and issues implementing regulations that are published in the Federal Register.

2.2 STATES

2.2.1 Defense and State Memorandum of Agreement

(<http://www.denix.osd.mil/denix/State/DSMOA/Guidance/note1.html>)

DoD developed the Defense and State Memorandum of Agreement (DSMOA) Program to enhance the involvement of States and territories in the cleanup of DoD installations. The authority for this program is found at 10 U.S.C. § 2705 which authorizes the Secretary of Defense (SECDEF) to enter agreements with individual States to reimburse those

States for their support and assistance in defense cleanup efforts. 10 U.S.C. § 2705 (2001) and 10 U.S.C. § 2701(d) (2001). DSMOAs specify the conditions under which a State will be reimbursed for costs of providing services in direct support of ER, N-funded or BRAC-funded activities. The following State services qualify for reimbursement:

Technical review, comments, and recommendations on all documents or data submitted to the State for projects using ER, N or BRAC funding, including actions accomplished under the Federal Facility Agreement (FFA) or Interagency Agreement (IAG);

DSMOA preparation/administration/amendments;

Identification/review/determination/regulation of applicable or relevant and appropriate requirements (ARARs);

Site visits to review DoD response actions;

Site visits to obtain and analyze split samples;

Support and assistance in conducting public participation requirements;

Participation in the Restoration Advisory Board (RAB);

Preparation and administration of a Cooperative Agreement (CA) to implement the DSMOA;

Independent Quality Assurance/
Quality Control (QA/QC); and

Any additional services that may be set forth in the DSMOA on a State-by-State basis.

A signed DSMOA represents a commitment between DoD and a State to cooperate in the cleanup program for specified installations and it establishes the procedural framework for payment. A signed DSMOA, although a prerequisite for reimbursement, is not a funding instrument. Prior to a State or territory receiving DSMOA funding, the State must first enter into a Cooperative Agreement (CA). The CA includes a specific two-year work plan concerning the restoration activities in the designated State or territory, as well as, a plan of projects and activities for the next four years, and a process for payment.

The Services review draft CA applications provided to them by the U.S. Army Corps of Engineers (USACE) for consistency with cost estimates and review of the work plan for State technical services.

2.2.2 DON Cost Reimbursement Pilot Project.

In 1999, the DON moved five closing facilities in California into a Cost Recovery Pilot Project. Under this project, the California Department of Toxic Substances Control (DTSC) has lead responsibility for cleanup oversight activities, while other State regulatory agencies such as Regional Water Quality Control Boards participate in providing regulatory oversight. This partnership with State agencies allows for State

involvement and assistance with DON response activities, as well as the opportunity for direct reimbursement from DON for expenses the State agencies incur.

2.3 DEPARTMENT OF DEFENSE/SECRETARY OF DEFENSE/DEPUTY UNDER SECRETARY OF DEFENSE, ENVIRONMENTAL SECURITY

Pursuant to EO 12580, DoD is the Lead Agency for actions taken under the authority of CERCLA at DoD installations. EO 12580 also delegated authority for response action decisions to the Secretary of Defense (SECDEF) "...with respect to release or threatened releases where either the release is on, or the sole source of the release is from any facility or vessel under the jurisdiction, custody, or control of DoD." EO No. 12580 (January 23, 1987), 52 Fed. Reg. 2923, 3 C.F.R. 1987 Comp. p.193, *as amended by* EO No. 12777, 56 Fed. Reg. 54757 (Oct. 22, 1991), and 3 C.F.R. 1987 Comp. p. 123.

SECDEF also has responsibilities under CERCLA §§ 105, 109, 111, 116, and 122. See 42 U.S.C. §§ 9605, 9609, 9611, 9611 and 9622 (2001). The DERP requires that the SECDEF identify an office within the Office of the Secretary to carry out the IR Program. 10 U.S.C. § 2701 (a) (2001). The SECDEF has delegated IR Program implementation responsibility to the Deputy Under Secretary of Defense, Environmental Security [DUSD(ES)].

DUSD(ES) is the focal point for DoD-wide environmental policy and planning. DUSD(ES) represents DoD before Congress, Federal and State agencies,

news media, and the public in environmental matters. DUSD(ES) is responsible for policy, management, and oversight of the DERP. DUSD(ES) responsibilities include:

Maintaining close interaction with the EPA Headquarters, national news media, and coordinating broad interface issues with States and the public to implement the requirements of the National Oil and Hazardous Substances Pollution Contingency Plan (NCP);

Providing special notification of hazardous wastes that are specific to DoD installations to the Department of Health and Human Services and EPA;

Providing integration of public review and comment in activities associated with implementing the NCP;

Submitting an annual report to Congress describing DERP activities per 10 U.S.C § 2706;

Providing oversight to the DERP including consistent program implementation across DoD components and establishing a DoD-wide restoration management information system containing site-specific data; and

Negotiating DSMOAs.

The IR Programs of DoD and the military services closely parallel the Environmental Protection Agency's (EPA) Superfund Program. The principal difference is the funding mechanism. The ER, N appropriation funds the DON IR Program.

Figure 2-1 shows the DoD/DON Chain of Command for the IR Program. Figure

2-2 shows the outline of DoD Responsibilities in Implementing CERCLA and NCP Requirements under EO 12580. Figure 2-3 shows the Navy Environmental Health Center Corporate relationship.

2.3.1 Department of Defense Explosive Safety Board

(<http://www.hqda.army.mil/ddesb/esb.html>)

Under 40 C.F.R. § 186.5 (2000), the Department of Defense Explosive Safety Board (DDESB) reviews and approves all plans for the leasing, transferring, or disposing of DoD real property where ammunition and explosive contamination exists or is suspected to exist. DoD 6055.9-STD, *DoD Ammunition and Explosive Safety Standards*, and NAVSEA OP 5, *Ammunition and Explosives Ashore, Safety Regulations for Handling, Storing, Production, Renovation, and Shipping*, outline the specific procedures that must be followed in these cases.

2.4 SECRETARY OF THE NAVY

2.4.1 Assistant Secretary of the Navy (Installations and Environment)

Per Paragraph 0325, U.S. Navy Regulations (1990), the Assistant Secretary of the Navy (Installations and Environment) [(ASN(I&E))] is the Secretary of the Navy's (SECNAV) designated focal point for the DoD IR Program. ASN(I&E) duties include coordination with the DUSD(ES) on policy issues and ultimate responsibility for DON IR Program.

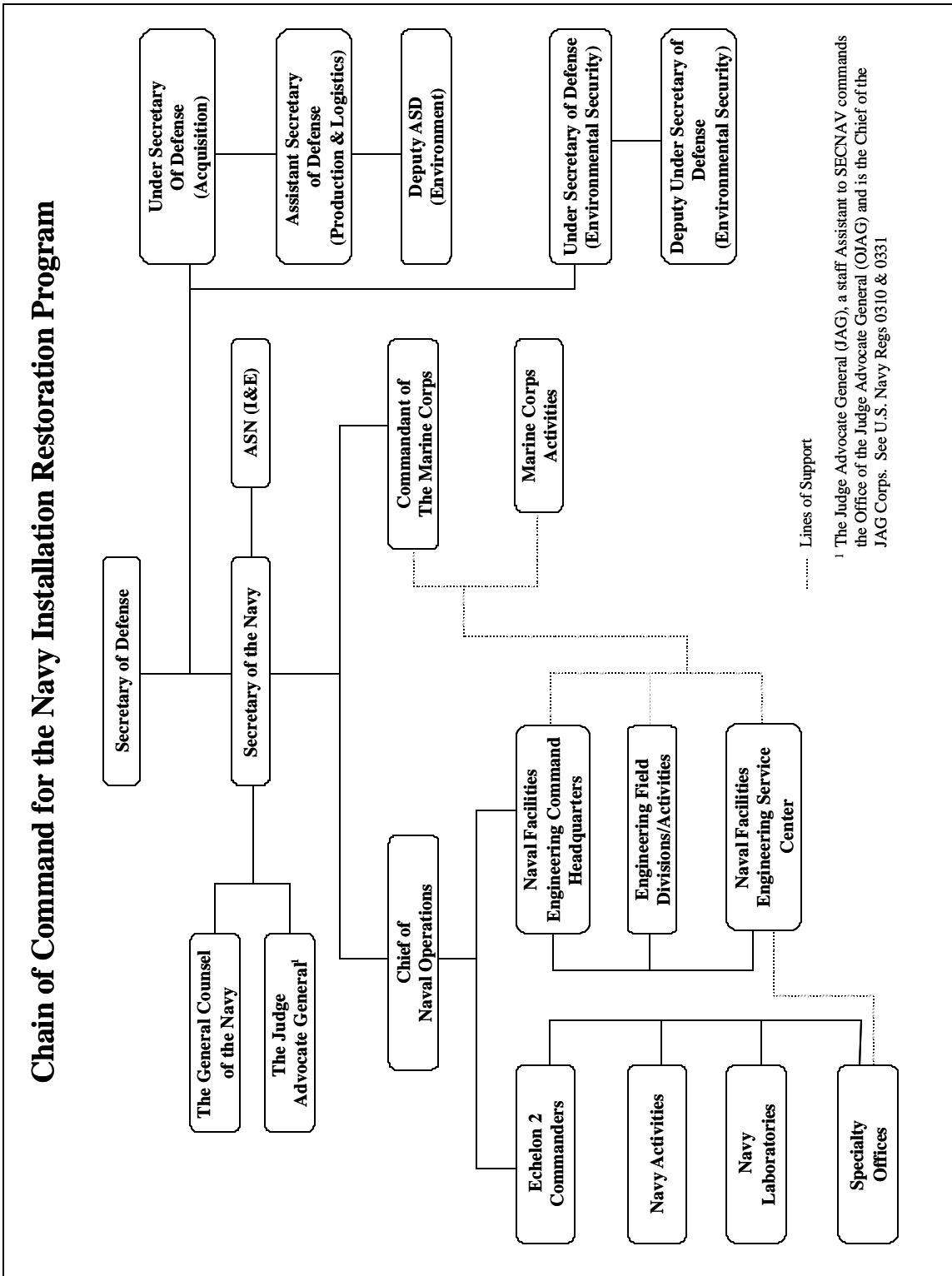
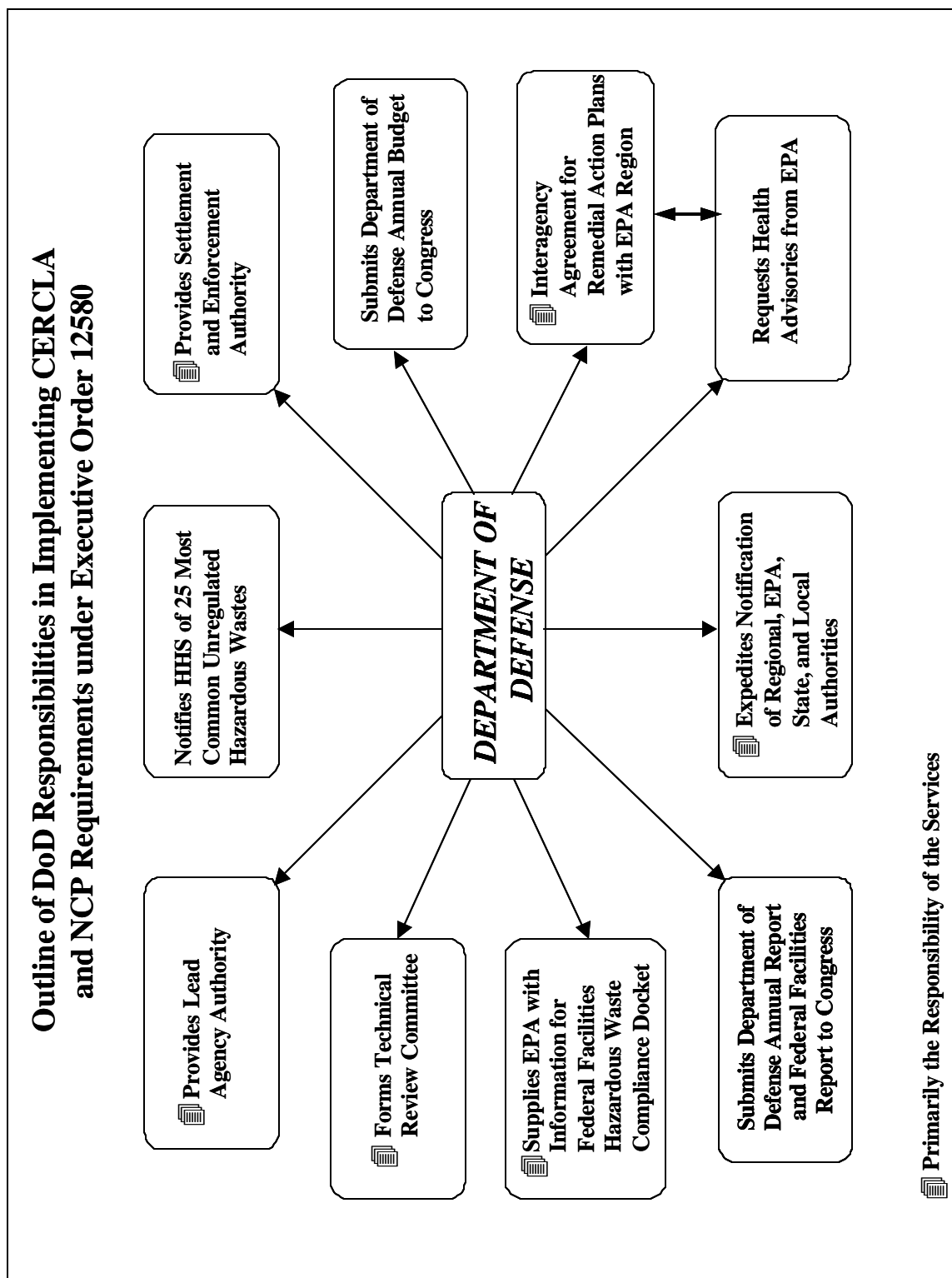


Figure 2-1: Chain of Command for the Navy Installation Restoration Program



ASN (I&E):

Provides general policy oversight for DON IR Program activities;

Represents the DON with environmental agencies on IR Program matters;

Represents the DON with senior level DoD officials and committees; and

Signs FFAs and IAGs after appropriate endorsement by the chain of command. The chain of command for FFAs and IAGs pertaining to Navy installations is via the major claimant, NAVFACENGCOM, and CNO (N45). The chain of command concerning Marine Corps installations and activities is via NAVFACENGCOM and CMC (LFL).

2.4.2 General Counsel

The General Counsel is the principal legal advisor to SECNAV and has primary responsibility within the DON for providing advice and counsel on environmental matters. See Paragraph 0327, U.S. Navy Regulations (1990), SECNAVINST 5430.25D of 1 Dec. 1977; and General Counsel memo (Subj.: Environmental Legal Services) of 31 Dec. 1992. Within the Office of the General Counsel (OGC), the Office of the Assistant General Counsel, Installations and Environment (I&E), has primary responsibility for advising the ASN(I&E) on environmental matters. Within the DON, the Associate General Counsel (Litigation) has primary responsibility for environmental litigation. These responsibilities will include being the Navy lead for settling and processing CERCLA contribution

claims brought against the Navy by entities other than Federal agencies. OGC attorneys are also assigned to the Offices of Counsel for the Commandant of the Marine Corps, the Navy Comptroller, the Naval Facilities Engineering Command, and the other Major Claimants.

2.4.2.1 Counsel, NAVFAC

The NAVFAC Office of Counsel has the largest cadre of environmentally trained attorneys in DON, with environmental law attorneys at the headquarters, EFD/EFAs, and at some of the Public Works Centers. These attorneys serve as legal advisors to NAVFAC program managers responsible for the many environmental programs, including the IR Program, under NAVFAC's cognizance. NAVFAC attorneys, working with their engineering and technical counterparts and in close coordination with the installation, negotiate all FFAs and Federal Facility State Remediation Agreements (FFSRAs) on behalf of the DON.

2.4.2.2 Counsel to the Commandant of the Marine Corps

Counsel to the Commandant of the Marine Corps, is the principal legal advisor to the Commandant on environmental matters. The Office of Counsel consists of both Marine Corps judge advocates and civilian OGC attorneys. Two regional offices, the Eastern Area Counsel Office (EACO) and the Western Area Counsel Office (WACO), are similarly staffed and provide advice and counsel on environmental matters to Marine Corps

commands and installations within their respective geographic areas.

2.4.3 Judge Advocate General

The Judge Advocate General (JAG) is the senior uniformed military lawyer in the DON. The duties of the JAG are set forth in Paragraph 0331 of the U.S. Navy Regulations (1990) and in SECNAVINST 5430.27A of 1 December 1977. While environmental law is a matter under the cognizance of the General counsel, the JAG and the members of the JAG Corps (JAGC) provide significant environmental law advice and counsel. The Office of Legislative Affairs (OLA) monitors the congressional legislative process, advises DON on pending legislation, and develops DON positions for transmission to DoD and Congress. Individual judge advocates are assigned as environmental counsel to CNO-45, the Area Environmental Coordinators (AECs), and to the Regional Environmental Coordinators (RECs) that do not have assigned OGC counsel. Finally, judge advocates assigned to staff judge advocate billets advise installation commanding officers and their staffs on all legal matters, including environmental.

2.5 CHIEF OF NAVAL OPERATIONS

(<http://web.dandp.com/n45/n453/index.html>)

The Chief of Naval Operations (CNO), Environmental Protection, Safety, and Occupational Health Division (N45):

Establishes policy;

Directs, coordinates, and monitors the IR Program within the Navy;

Coordinates with ODUSD(ES), ASN(I&E), CMC, and non-DoD agencies involved in environmental restoration matters; and

Submits program and budget requests, forwards funds for execution, and provides program oversight.

2.6 COMMANDANT OF THE MARINE CORPS

The Commandant of the Marine Corps (CMC), Land Use and Military Construction Branch (LFL):

Provides oversight for the implementation of the IR Program at Marine Corps installations; and

Coordinates with ASN (I&E), CNO (N45), and NAVFAC on environmental restoration matters.

2.7 MAJOR CLAIMANT/ECHELON II COMMANDS

Per OPNAVINST 5090.1B, CH-2, Paragraphs 1-5.15 and 1.5-6.1 and MCO P5090.2A, Paragraphs 10300-10302.

Major Claimant/Echelon II Commands:

Ensure that subordinate installations identify IR Program requirements to NAVFAC;

Ensure that subordinate installations receive IR Program information and guidance;

Ensure that subordinate installations fulfill their responsibilities under the DON IR Program;

Ensure that public participation and other legal requirements are met at installations with IR sites; and

Ensure that installation budgets reflect resource requirements to support the DON IR Program.

2.8 NAVAL FACILITIES ENGINEERING COMMAND

<http://www.navfac.navy.mil/>

The Naval Facilities Engineering Command (NAVFAC) is the Navy's real estate and construction agent. It is responsible for the acquisition, construction, maintenance, and when no longer needed, disposal of the Navy's shore infrastructure. Within DON, NAVFAC is responsible for the IR Program. It provides expertise in environmental engineering, technical, contracting and legal support and coordinates all DON IR actions. Per OPNAVINST 5090.1B, CH-2, Paragraph 15-6.2 and MCO P5090.2A, Paragraph 10302.

NAVFAC:

Executes the IR Program;

Provides program and technical support;

Develops and supports ER, N resource requests and manages funds allocated for program execution;

Provides IR-related training to EFDs and EFAs in coordination with CECOS; and

Provides quarterly briefings to Major Claimants/Echelon II Commands. OPNAVINST 5090.1B, CH-2,

Paragraphs 15-6.1 and 15-6.2 (9 Sept. 1999)

2.8.1 Engineering Field Divisions/ Engineering Field Activities

The Engineering Field Divisions (EFDs) and Engineering Field Activities (EFAs) are subordinate commands under NAVFAC. The EFDs/EFAs provide environmental engineering, technical, legal, and contracting assistance to Major Claimants and installations within their respective geographic areas of responsibility. NAVFAC's EFDs and EFAs with IR Program responsibilities are;

Atlantic Division (LANTDIV),
Norfolk, Virginia

Pacific Division (PACDIV), Pearl
Harbor, Hawaii

Southern Division (SOUTHDIV),
Charleston, South Carolina

Southwestern Division (SWDIV),
San Diego, California

EFA Southeast, (EFA SE),
Jacksonville, Florida

EFA Northeast (EFA NE),
Philadelphia, Pennsylvania

EFA Northwest (EFA NW), Poulso, Washington

EFA Chesapeake (EFA CHES),
Washington, D. C.

EFA Midwest (EFA MW), Great
Lakes, Illinois

EFD/EFAs:

Execute the IR Program at the field level;

Maintain administrative record files and distributing copies as required;

Provide information and reviewing the DERP, Annual Report to Congress.

Develop and revise installation specific Community Relations Plans (CRP);

Manage and administer contracts supporting the IR Program;

Negotiate FFAs and State remediation agreements on behalf of and in close coordination with the installation as necessary;

Ensure that IR Program requirements are charged to ER, N, and those expenses chargeable to the installation's operations and maintenance (O & M) appropriation are accurately identified and distinguished from one another;

Prepare No Further Action documentation;

Participate in remediation planning meetings with other PRPs and serving as the DON representative for PRP negotiations with EPA;

Provide semi-annual updates of the Navy's environmental restoration database (NORM);

Provide quarterly briefings to the Major Claimants/Echelon II Commands on the status of the IR Program, as requested by NAVFAC;

Assign Remedial Project Managers (RPMs) to manage remedial or other response actions in the IR Program;

Coordinate with the installation and regulatory agencies prior to initiating projects and during all phases through to project completion;

Develop and perform site-specific projects in coordination with installations to assess and control contamination; prepare project plans, reports, and contract documents; coordinate review and comments; and distribute final documents to the appropriate installation and Major Claimant;

Provide IR study results to planning and real estate personnel and provide support to acquisition project managers to ensure that hazardous waste site conditions are taken into account by other Navy programs and projects before land use decisions are made;

Provide technical and financial oversight during project performance;

Track project progress to meet schedule requirements;

Negotiate in coordination with the installation and forward proposed remediation agreements to CNO/CMC via the chain of command;

Prepare, coordinate and forward the Record of Decision (ROD) to the installation Commanding Officer/Commanding General for signature; and

Provide support to installations with member representation at Restoration Advisory Boards (RAB).

2.8.1.1 Remedial Project Manager

The RPM is responsible for the management of the IRP at the installation level. The RPM is a NAVFAC employee.

The RPM's responsibilities include identifying the resources needed to effectively implement the remedial action process including CERCLA response actions and ER, N eligible RCRA Corrective Actions. The RPM coordinates the work of Navy technical support agencies and contractors to accomplish IR Program goals and policies. The RPM is the single individual involved in all aspects of the project including interagency relationships, funding, scheduling, design, and remedial action. The RPM:

- Coordinates, directs, and reviews IR Program site work;

- Maintains a close relationship with the installation to facilitate communication and recognize the installation's responsibilities for installation property, personnel, and mission;

- Assures compliance with the NCP;

- Forwards IR Program studies to the EPA and State regulatory agencies during the review process and upon study completion;

- Identifies ER, N funding needs for response actions at the installation;

- Maintains relationships with representatives of regulatory agencies and natural resource stakeholders/trustees to facilitate communications

- concerning their environmental and public health interests;

- Understands the DSMOA;

- Manages the IR Program work effort to comply with milestones and commitments in the ROD and FFA;

- Assists NAVFAC Contracting Officers in the administration of work performed by Remedial Action Contract (RAC) contractors;

- Ensures response action scope and level is appropriate to the type and seriousness of environmental and/or public health threats being remedied;

- Coordinates with the installation to ensure that all long term monitoring is accomplished;

- Serves on or as a technical advisor to the RAB;

- Evaluates site screening tools and innovative technology for possible use.

Additional duties at a BRAC installation involve being a member of the BRAC Cleanup Team (BCT). The RPM's involvement with ongoing and planned restoration program activities is important to the BCT and the RPM needs to keep the BCT informed of planned and ongoing environmental restoration program activities. Knowing the scope of planned and ongoing program activities and the contracts driving them will facilitate the project team's understanding of the mechanisms and resources available to implement environmental restoration at the installation.

The RPM should also work closely with regulatory agencies in efforts to minimize the number of CERCLA cleanup areas that become listed corrective action units under RCRA.

RPMs should:

Account for all waste sites under RCRA as a result of an installation-wide RFA;

Integrate RCRA Corrective Action requirements with CERCLA under an FFA. Apply ARARs, including RCRA cleanup standards, to the IR Program site;

Determine which waste sites will be addressed under the State Underground Storage Tank Program;

Keep the regulatory agency or agencies informed of remedial action progress under the IR Program;

Determine the eligibility of RCRA SWMUs and USTs for inclusion in the IR Program; and

Coordinate closely with counsel.

The RPM should attempt to keep any contaminated area under a single program to eliminate regulatory overlap and avoid having to satisfy more than one regulatory group.

2.8.2 Naval Facilities Engineering Service Center

<http://www.nfesc.navy.mil/index.html>

The Naval Facilities Engineering Service Center (NFESC), located at Construction Battalion Center, Port Hueneme, California:

Provides IR Program technical analyses (upon request) to NAVFAC, and to the EFDs and EFAs;

Manages the QA/QC review of environmental laboratories involved in the IR Program;

Maintains a library of program documents;

Develops and performs site-specific projects (with the concurrence of the EFD/EFA and installation) to assess and control contamination at installations;

Provides administrative support to the specialty offices addressing unique IR problems related to marine and ordnance operations;

Provides technical input to the IR Program through participation in Strategic Environmental Research and Development Program and Environmental Security Technology Certification Program reviews;

Provides EFDs and EFAs with recommendations and technical assistance to conduct RI/FS, remedial actions (RA), long-term monitoring, and site close out;

Provides technical studies, specialized field teams (including technology transfer teams), and field support guidance, i.e., manuals, guides, and standard procedures, to assist installations and EFDs/EFAs in complying with IR Program requirements including written program quality assurance strategy;

Provides IR-related training such as Health and Safety Training and Resident

Officer in Charge of Construction (ROICC) training in conjunction with CECOS;

Evaluates unsolicited proposals for Research, Development, Test and Evaluation (RDT & E) for environmental cleanup; and

Maintains Appendix E, Innovative Technologies.

2.8.3 Specialty Offices

Specialty Offices provide technical support to the IR Program. These offices are as follows:

Ordnance Environmental Support Office, Indian Head Division, Naval Surface Warfare Center, Indian Head, Maryland (OESO): specialty chemical, ordnance, munitions, and ordnance activity environmental protection;

Marine Environmental Support Office, Naval Command, Control and Ocean Surveillance Center Research, RDT&E Division, San Diego, California (MESO): aquatic environmental protection;

Aircraft Environmental Support Office, Naval Aviation Depot, North Island, California (AESO): aircraft and aircraft facility environmental protection; and

Ships Environmental Support Office, Naval Surface Warfare Center, Carderock Division, Carderock, Maryland (SESO): ship environmental protection.

2.9 AREA ENVIRONMENTAL COORDINATOR

Area Environmental Coordinators (AECs) are responsible for coordination of environmental issues within their designated EPA regions. AECs appoint Regional Environmental Coordinators. The Navy AECs are:

CINCLANTFLT: EPA Regions 1, 2, 3, and 4

CNET: EPA Regions 5 and 6

COMNAVRESFOR: EPA Regions 7 and 8

CINCPACFLT: EPA Regions 9 and 10.

OPNAVINST 5090.1B, CH-2, Paragraph 1-3 (Sept. 9, 1999).

2.10 REGIONAL ENVIRONMENTAL COORDINATOR

The Regional Environmental Coordinator (REC) is the senior Navy officer in a local region and is responsible for coordinating environmental matters and public affairs. The REC monitors State environmental legislation and regulations for impacts on Navy operations.

2.11 INSTALLATION COMMANDING OFFICER

The IR Program may affect the mission of an installation, the health and welfare of the people who work and live on or near the installation, and the public's attitude in neighboring communities toward an installation. Commanding Officers/ Commanding Generals

(COs/CGs) of installations must be consulted and kept fully informed about IR Program decisions and actions affecting their installations. Their knowledge of the status of the IR Program will assist them in making property management decisions for all tenant and tenant activities. COs/CGs shall:

Coordinate with the cognizant EFD/EFA concerning all IR or BRAC cleanup matters;

Assist the EFD/EFA in negotiating FFAs, State agreements, and other agreements affecting the installation;

Ensure that appropriate information is placed in the local information repository;

Ensure that IR Program site conditions are considered prior to making land use planning, development, or operation decisions, especially in regard to Military Construction and special projects development. Incorporate IR Program review into the shore facilities planning process;

Cooperate with the on-site EFD/EFA representative (generally the Officer in Charge of Construction/ROICC) to resolve installation issues that affect IR contractor operations;

Ensure that installation O&M funding is not used to fund ER, N IR efforts;

Provide an installation contact and logistic support to the EFD/EFA and contractors performing investigations and cleanup of IR sites;

Participate in negotiations and remediation planning meetings with State and federal regulatory personnel;

Notify servicing EFD/EFA, REC, and the chain of command of any EPA or State notification of PRP action;

Prepare and implement a public participation program to include a CRP for IR Program sites and keep RECs and EFDs/EFAs informed of all public affairs actions;

Sign ROD for IR Program sites on the installation;

Provide the ultimate assurance that all applicable statutory and regulatory requirements concerning safety and health training for installation personnel are met for personnel accessing IR site;

Notify Federal, State, and local officials when a release is discovered;

Participate in scoping meetings for contract negotiations between the EFD/EFA and the IR or BRAC contractor;

Identify funding needs to the respective chain of command;

Establish and conduct periodic meetings of the RAB; and

- Provide documentation concerning UST sites (e.g. tank abandoned date, tank installation date, and date when tank was discovered to be leaking) for purposes of determining eligibility for ER,N funding.

2.12 OTHER SUPPORTING NAVY ORGANIZATIONS

Per OPNAVINST 5090.1B, CH-2, Paragraph 1-5.11 and 15-6.3, the Chief, Bureau of Medicine and Surgery (CHBUMED) is responsible for:

Provides support for health assessments, toxicological profiles, health/safety training, review of human health evaluations, and risk assessments;

Serving as the Navy coordinator with the Agency for Toxic Substances and Disease Registry (ATSDR) concerning ATSDR's legally mandated public health assessment responsibilities; and

Assisting NAVFACENGCOM and installations during public meetings and providing responses to community concerns regarding program health and safety.

Per BUMED Instruction 5450.157, CH-1, BUMED has delegated these responsibilities to the Navy Environmental Health Center (NAVENVIRHLTHCEN). NVAENVIRHLTHCEN provides medical consultation in all health-related actions within the IR and the BRAC programs.

Figure 2-3 details the relationship of BUMED and NAVENVIRHLTHCEN in providing support to NAVFACENGCOM and the EFDs/EFAs for the IR Program.

2.13 PROJECTS IN FOREIGN COUNTRIES

By statute, the DERP is applicable only within the United States, its territories and possessions. Restoration activities abroad are carried out pursuant to international agreements. Readers are referred to the DUSD *Overseas Cleanup Policy of 18 October 1995*.